IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.32705 of 2014

S.Gnanadeepam .... Petitioner

Vs

1. State rep. by
Inspector of Police,
Central Crime Branch,
Chennai – 600 008.

2. S.Mohan Kumar .... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Cr.No.453 of 2014 pending on the file of the first respondent police and quash the FIR as against the petitioner.

For Petitioners	: Mr.A.Ramesh, Senior Counsel for Mr.J.Suresh
For R1	: Mr.L.Baskaran Government Advocate (Crl.Side)
For R2	: Mr.B.Gopalakrishnan

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.453 of 2014 pending on the file of the first respondent.

2. The case of the prosecution is that the second respondent

entered into an agreement with the first accused to purchase the land admeasuring 61 Ares 53 cents for a total sale consideration of Rs.13,00,00,000/- and paid a sum of Rs.3,05,00,000/- as advance on the date of agreement viz., 22.12.2010. For the security purpose, for the amount received by the accused, they had given a pronote, cheques and other original documents in respect of other properties. They did not give any receipt for the amount received by them. As per the agreement, the accused failed to execute any sale deed on receipt of the balance sale consideration, thereby, they cheated the second respondent the amount which was received as advance. Hence, the complaint.

3. On the receipt of the said complaint, the first respondent registered FIR in Crime No.453 of 2014 for the offence under Sections 406 & 420 of IPC read with 34 of IPC.

4. The learned Senior Counsel appearing for the petitioner submitted that there are totally two accused, in which the petitioner is arrayed as second accused. She is none other than the wife of the first accused. Even according to the first accused, he had entered into an agreement for sale for a sum of Rs.13,00,00,000/-. The subject property

is owned by the first accused. The petitioner is implicated falsely and no offence is made out as against the petitioner.

5. On perusal of the entire FIR, it is clear that all the allegations are civil in nature. Even according to the second respondent, he advanced a sum of Rs.3,05,00,000/- in order to purchase the subject property and entered into an agreement for sale. Thereafter the accused failed to execute the sale deed. Therefore, the second respondent ought to have filed a suit for specific performance in order to execute the sale deed in his favour. No offence is attracted as against the petitioner and the FIR is liable to be quashed. That apart, the second respondent filed a suit for recovery of money before this Court in C.S.No.786 of 2012.

6. A perusal of the suit pleadings shows that the second respondent did not even whisper about the agreement, which was allegedly entered between the first accused and the second respondent. The suit was simply filed for recovery of money, since the said amount was paid by loan. In fact, pending the said suit, the second respondent filed an application for interim injunction restraining the accused from selling, leasing, encumbering or dealing with the subject property and the

same was dismissed and the order of the Hon'ble Division Bench of this Court in O.S.A.Nos. 251 & 252 of 2013 was confirmed. Suppressing all those facts, the second respondent lodged a false complaint. In support of his contention, he relied upon the Judgment reported in ***2023 SCC Online SC 90*** in the case of ***Usha Chakraborty and another Vs. State of West Bengal and another.***

7. The learned Government Advocate (Criminal Side) appearing for the first respondent submitted that there are specific overt act as against the petitioner, in order to attract the offence under Sections 406 & 420 of IPC. The petitioner is none other than the wife of the first accused. In fact, after receipt of a sum of Rs.3,05,00,000/- as advance, both the accused submitted documents as security. The said property was owned by the petitioner and subsequently sold out to third parties in order to cheat the second respondent.

8. He also relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Neeharika Infrastructure Pct. Ltd***

Vs. State of Maharashtra reported in ***2021 SCC online SC 315,*** in which the Hon'ble Supreme Court of India held that the first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the Court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report before the learned Magistrate.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. It is seen from the records that there are totally two accused, in which the petitioner is arrayed as second accused. She is the wife of the first accused. The second respondent herein had entered into an agreement for sale dated 22.12.2010, thereby agreed to purchase the

property owned by the first accused for a total sale consideration of Rs.13,00,00,000/-. On the date of agreement, he paid a sum of Rs,3,05,00,000/- as advance. Thereafter, the first accused failed to execute any sale deed and hence, the second respondent lodged a complaint. It is also revealed that the second respondent is a financier and used to lend money. The first accused borrowed some amount and repaid the same. While borrowing the amount, he had given documents, pronote and cheques. Therefore, after repayment of the loan amount, the second respondent failed to return the documents. Hence, the first accused caused legal notice on 11.06.2012, thereby called upon the second respondent to return the cheques, signed papers and other documents and also not to misuse those documents. Even then, the second respondent presented some cheques and initiated the proceedings under Section 138 of Negotiable Instruments Act as against the first accused.

11. **That apart, the second respondent also filed a suit in C.S.No.786 of 2012 for the following prayers, which is pending :**

> (a) Directing the defendant to pay a sum of Rs.16,12,00,000/- together with interest at the rate of 24% p.a. accrued on the sum of Rs.13,00,00,000/- from the

date of plaint till repayment in entirety.

(b) Permanent injunction restraining the defendant, his men, servants, agents or any person acting under him from selling, leasing, encumbering or dealing with the properties given as collateral security mentioned in the schedule hereunder in any manner till repayment of entire loan and accumulated interest.

(c) to pay cost of the suit.

(d) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

12. On perusal of the entire complaint, there is no whisper about the agreement for sale, which was allegedly entered between the second respondent and the first accused. Further the said suit was filed for recovery of money. Pending suit, the second respondent also filed an application for interim injunction restraining the first accused from alienating or dealing with the subject property. However, the said application was dismissed and aggrieved by the same, he also preferred an appeal in O.S.A.Nos.251 & 252 of 2013 before this Court and the same was dismissed by the Hon'ble Division Bench of this Court on 04.09.2013. Therefore, no allegations are made as against the petitioner herein. Even assuming that the first accused received an advance and

thereafter, failed to execute the sale deed, the second respondent ought to have filed a suit for specific performance.

13. As rightly pointed out by the learned Senior Counsel appearing for the petitioner the second respondent had suppressed the entire facts in respect of filing the suit in C.S.No.786 of 2012 and the proceedings initiated under Section 138 of Negotiable Insturments Act as against the accused and lodged a complaint in C.C.No.5611, 5613 & 5614 of 2012 on the file of the II Metropolitan Magistrate Court, Egmore, Chennai. The non-disclosure the respondent has in troth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil Court, which obviously is the causative incident for the respondent's allegation of perpetration of the aforesaid offences against the appellants. It is further held that in the complaint, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent already approached the jurisdictional civil Court by instituting a civil suit and it is pending. There can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the

respondent had filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship.

14. In the case on hand, the second respondent also filed a suit for recovery of money as if he had lent a sum of Rs.3,00,00,000/- as loan to the first accused and his interim injunction application was also dismissed. That apart, as far as the petitioner is concerned, she is arrayed as A2 and except the relationship viz., wife of the first accused, no allegation is made out by the petitioner. No offence is made out by the petitioner under Section 406 & 420 of IPC. Therefore, the Judgment cited by the learned Government Advocate (Crl.Side) is not helpful to the case on hand.

15. In view of the above, the FIR in Cr.No.453 of 2014 pending on the file of the first respondent police is hereby quashed. The first respondent is directed to complete the investigation and file final report in Crime No.453 of 2014 as against the first accused within a period of eight weeks from the date of receipt of a copy of this order.

16. In the result, this Criminal Original Petition stands

allowed.

24.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To
1. Inspector of Police,
Central Crime Branch,
Chennai – 600 008.

2. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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